Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC

In the matter of:)
Creation of a Low Power Radio Service) MM Docket-99-25
)

PETITION FOR PARTIAL RECONSIDERATION

- 1. REC Networks ("REC"), an unincorporated entity through its founder Michelle (Michi) Eyre is a long-time proponent for the Low Power FM ("LPFM") radio service from the original petitions for the service through today and into the future. REC is best known for our free self-service broadcast tools including the original online Low Power FM channel search tool as well as providing education regarding the Low Power FM Radio Service as well as other broadcast services. REC believes in a citizen's access to the airwaves.
- 2. This *Petition for Partial Reconsideration* addresses only the Commission's interpretation² of Section 7 of the Local Community Radio Act³ ("LCRA") and its application to LPFM stations that the Commission considers as being licensed "at a location that satisfies the third-adjacent channel minimum distance separations set forth in section 73.807" of the Commission's rules⁴ and its application to the statute requiring "periodic announcements". We

² - Creation of a Low Power Radio Service, Sixth Report and Order ("R&O") at 87.

¹ - <u>http://myLPFM.com</u>

³ - Pub. L. No. 111-371, 124 Stat. 4072 (2011).

⁴ - See revised rule § 73.810(b) in R&O. For this *Petition for Partial Reconsideration*, we are limiting the focus to the "periodic announcements" as defined in § 73.810(b)(2) of the revised

continue to feel that Congress did not intend on two separate regimes for LPFM stations where it comes to third-adjacent channels and this separation of regimes causes undue burden on new applicants as well as existing LPFM stations that were never the intended subject of the LCRA.

- 3. The Radio Broadcast Protection Act⁶ ("RBPA") was the congressional reaction to the Commission's original *Report and Order*⁷ creating the LPFM radio service. The RBPA was enacted mainly in part due to the Commission's original findings that LPFM stations should not be required to protect domestic FM full power, translator or booster stations on the third adjacent channel. After the RBPA was signed into law, the Commission released the *Second Report and Order* that would implement the provisions of the RBPA including the protection of third-adjacent channels by LPFM station in respect to FM full power, translator and booster stations.
- 4. A provision of the RBPA required the Commission to conduct a study of the technical impacts of allowing LPFM stations in locations and on channels that do not meet the minimum spacing requirements for third adjacent channels⁸. The Commission contracted the MITRE Corporation to do the testing. Comsearch located potential sites and licensed several

rules. We feel that the interference remediation process in § 73.810(b)(1), although significantly modified in this rulemaking, still applies to LPFM stations that satisfy third-adjacent channel minimum spacing requirements as it did prior to this recent rulemaking.

⁶ - Pub L. No. 106-553. 114 Stat. 2762 (2000).

⁵ - LCRA §7(2).

⁷ - Creation of a Low Power Radio Service, Report and Order. 15 FCC Rcd 2249-50 at 104.

⁸ - See RBPA § (b)

experimental FM stations to conduct the test⁹. MITRE would eventually conclude that "existing third-adjacent channel distance restrictions should be waived to allow LPFM operation at locations that meet all other FCC requirements". This was reflected in the FCC's required report to Congress. As a result of this report, there have been several attempts to pass the LCRA.

- 5. Local Community Radio Act of 2005. In 2005, Senators McCain, Cantwell and Leahy introduced a bill, S.312, The Local Community Radio Act of 2005¹¹. The bill was read twice and referred to the Committee on Commerce, Science and Transportation. The bill proposed to repeal the Radio Broadcast Protection Act, allow for third adjacent-channel spacing, continued to protect radio reading services and assured that licenses would be made available to both LPFM and FM translators. This Senate bill died in committee.
- 6. Local Community Radio Act of 2007. On June 21, 2007, a House bill H.R. 2802¹² was introduced Representatives Doyle and Terry. The bill was referred to the Committee on Energy and Commerce. On the same day, Senators Cantwell, McCain, Leahy, Sanders and Dougan introduced S. 1675 in the Senate¹³. Like with the 2005 bill, it was referred to the Committee on

 $^{^9}$ - See Field Test Plan – LPFM Third-Adjacent Channel Interference Analysis – available at http://www.recnet.com/mitre/6.pdf

¹⁰ - See MITRE Report at 5.2.1 – available at: http://www.recnet.com/mitre/2.pdf

¹¹ - See *Local Community Radio Act of 2005*. 109 Cong S.312 (2005).

¹² - See *Local Community Radio Act of 2007*. 110 Cong HR 2802 (2007).

¹³ - See *Local Community Radio Act of 2007*. 110 Cong S 1675 (2007).

Commerce, Science and Transportation. Both bills had text similar to the 2005 bill however the Senate version was amended to include prohibitions on previously unlicensed (pirate) operators, maintenance of the third adjacent channel restrictions in New Jersey and the requirement for a study on LPFM's impact on full-power commercial stations. Both bills were unsuccessful.

- 7. Local Community Radio Act of 2009. In 2009, H.R. 1147 ("LCRA of 2009") ¹⁴ was introduced in the House by Representative Doyle. The language of the introduced bill was similar to the 2007 version of the House bill. In December, 2009, the bill was amended to add protections for FM translator inputs and several interference remediation rules that are similar to some of the provisions in the enacted bill's Section 7. Throughout this bill, stations on third-adjacent channels are referred to as stations "on third-adjacent channels" ¹⁵. With those amendments added, the bill passed the House and was referred to the Senate. The Senate added an amendment adding the requirement for the study on LPFM and commercial stations similar to the 2007 Senate bill. This bill passed in the House but then died in Senate committee.
- 8. Local Community Radio Act of 2010. The 2010 version of the bill ("2010 bill"), the version that was passed and signed into law had many similarities to the LCRA of 2009, with the following exceptions:

¹⁴ - See *Local Community Radio Act of 2009*. 111 Cong HR 1147 (2009).

¹⁵ - LCRA of 2009 §8.

- The LCRA of 2009 included a narrative of findings which also appeared on previous versions of the bill.
- With the removal of the "Findings" section, Section 8 of the LCRA of 2009 was renumbered
 Section 7 on the 2010 bill.
- A new Section 7(1) is added requiring the same interference remediation policies that currently apply to FM translator and booster stations to also apply to LPFM.
- Sections 8(1), 8(2), 8(3) and 8(4) of the LCRA of 2009 were renumbered 7(2), 7(3), 7(4) and 7(5) respectively and the "on a third-adjacent channel" language was carried over from the 2009 bill to the 2010 bill.
- Additional language was added that provided additional protections to New Jersey full service FM stations within their protected service contours from LPFM stations in respect to co-channel, first-adjacent, second-adjacent and third-adjacent channels.
- 9. Based on the overall history of the LCRA through the four attempts to pass this legislation into law, REC continues to feel that Congress never intended to create two regimes of and with the exception of the protections for FM stations in New Jersey enacted in Section 7(6) of the LCRA, it continues to be our belief that Sections 7(1) through 7(5) of the LCRA only apply to LPFM stations that do not satisfy the third-adjacent channel spacing requirements. In other words, stations that would have been prohibited under the RBPA but are now legal once again under the LCRA.

- 10. The misinterpretation of the LCRA is very evident in the new Section 73.810(b)(2) which mandates the "periodic announcements" pursuant to Section 7(2) of the LCRA. The new Section 73.810(a) which governs LPFM stations that do not satisfy minimum distance spacing in respect to third-adjacent channel assumes a lower distance limit of 0 km (co-location) and an upper distance limit of the third-adjacent channel figures shown in Section 73.807. However, the new Section 73.810(b) which governs LPFM stations that meet minimum distance spacing in respect to third-adjacent channel assumes a lower distance limit of the third-adjacent channel figures shown in Section 73.807 but do not specify any upper distance figure. If you were to take a "hard look" at Section 73.810(b)(2), you will see that applies to every single LPFM station in the nation that is not short spaced to a third-adjacent channel FM station, even if the nearest thirdadjacent channel station is over a one hundred kilometers away. The rule does not provide any specific guidance into which third-adjacent channel stations are impacted. If an LPFM station was to literally follow this rule as currently written, their periodic announcement could include hundreds if not thousands of potential interfering stations. We do not believe this is what Congress intended.
- 11. Also as a part of the "hard look", let's take a moment and think about how this rule would have been implemented if the LCRA of 2009 had passed. The LCRA of 2009 had used consistent language throughout the bill to refer to third adjacent channel stations. We feel that if we were implementing the 2009 LCRA and not the 2010 version of the bill, the periodic announcements and other provisions would have applied only to the new LPFM opportunities that would have been created as a part of the legislation, not putting a restriction on LPFM opportunities that have been legal the entire time, despite the passing of the RBPA.

12. Conclusion. REC feels that the Commission may have misinterpreted the LCRA that as

signed into law as the wording of the 2010 legislation as having two regimes of LPFM stations

when we continue to feel that it was Congress' intention to only have a single regime of LPFM

stations on third-adjacent channels, those that were made prohibited under the RBPA. We are

asking the Commission to take a "hard look" at the new Section 73.810 of the rules and how that

section may impact LPFM stations that do satisfy the minimum spacing to FM full-power,

translator and booster stations on third-adjacent channels. We are asking that the Commission

amend Section 73.810(b)(2) to only apply those provisions related to "periodic announcements"

to LPFM stations that do not meet the minimum spacing requirements to third-adjacent channel

FM stations.

Respectfully submitted,

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APPENDIX A

COMPARISON OF SECTION 8 OF THE LOCAL COMMUNITY RADIO ACT OF 2009 AND SECTION 7 OF THE LOCAL COMMUNITY RADIO ACT OF 2010

LCRA 2009 – Section 8	LCRA 2010 – Section 7
	(1) With respect to those low-power FM stations
	licensed at locations that do not satisfy third-
	adjacent channel spacing requirements under
	section 73.807 of the Commission's rules (47 CFR
	73.807), the Federal Communications Commission
	shall provide the same interference protections that
	FM translator stations and FM booster stations are
	required to provide as set forth in section 74.1203
	of its rules (47 CFR 74.1203) as in effect on the
	date of enactment of this Act.
(1) For a period of one year after a new low-power	(2) For a period of 1 year after a new low-power
FM station is constructed on a third-adjacent	FM station is constructed on a third-adjacent
channel , the low-power FM station shall be	channel , such low-power FM station shall be
required to broadcast periodic announcements that	required to broadcast periodic announcements that
alert listeners that interference that they may be	alert listeners that interference that they may be
experiencing could be the result of the operation of	experiencing could be the result of the operation of
the new low-power FM station on a third-	such low-power FM station on a third-adjacent
adjacent channel and shall instruct affected	channel and shall instruct affected listeners to
listeners to contact the low-power FM station to	contact such low-power FM station to report any
report any interference. The Federal	interference. The Federal Communications
Communications Commission shall require all	Commission shall require all newly constructed
newly constructed low-power FM stations on	low-power FM stations on third-adjacent channels to
third-adjacent channels to-	
(A) notify the Federal Communications Commission and all affected stations on third-	(A) notify the Federal Communications Commission and all affected stations on third-
adjacent channels of interference complaints; and	adjacent channels of an interference complaint by
(B) cooperate in addressing any such interference.	electronic communication within 48 hours after the
(b) cooperate in addressing any such interference.	receipt of such complaint; and
	(B) cooperate in addressing any such interference.
(2) Low-power FM stations on third-adjacent	(3) Low-power FM stations on third-adjacent
channels shall be required to address complaints of	channels shall be required to address complaints of
interference within the protected contour of an	interference within the protected contour of an
affected station and shall be encouraged to address	affected station and shall be encouraged to address
all other interference complaints, including	all other interference complaints, including
complaints to the Federal Communications	complaints to the Federal Communications
Commission based on interference to a full-service	Commission based on interference to a full-service
FM station, an FM translator station, or an FM	FM station, an FM translator station, or an FM
booster station by the transmitter site of a low-	booster station by the transmitter site of a low-
power FM station on a third-adjacent channel at	power FM station on a third-adjacent channel at
any distance from the full-service FM station, FM	any distance from the full-service FM station, FM
translator station, or FM booster station.	translator station, or FM booster station. The
	Federal Communications Commission shall
	provide notice to the licensee of a low-power FM
	station of the existence of such interference within
	7 calendar days of the receipt of a complaint from a
	listener or another station.

- (3) To the extent possible, the Federal Communications Commission shall grant low-power FM stations **on third-adjacent channels** the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.
- (4) The Federal Communications Commission shall--
- (A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission;
- (B) accept complaints based on interference to a full-service or FM translator station by the transmitter site of a low-power FM station on a **third-adjacent channel** at any distance from the full-service or FM translator station; and (C) accept complaints of interference to mobile reception.
- (4) To the extent possible, the Federal Communications Commission shall grant low-power FM stations **on third-adjacent channels** the technical flexibility to remediate interference through the colocation of the transmission facilities of the low-power FM station and any stations on third-adjacent channels.
- (5) The Federal Communications Commission shall--
- (A) permit the submission of informal evidence of interference, including any engineering analysis that an affected station may commission;
 (B) accept complaints based on interference to a full-service FM station, FM translator station, or FM booster station by the transmitter site of a low-power FM station on a third-adjacent channel at any distance from the full-service FM station, FM translator station, or FM booster station; and (C) accept complaints of interference to mobile

reception.

(6) The Federal Communications Commission shall for full-service FM stations that are licensed in significantly populated States with more than 3,000,000 population and a population density greater than 1,000 people per one square mile land area, require all low-power FM stations licensed after the date of enactment of this Act and located on third-adjacent, second-adjacent, first-adjacent, or co-channels to such full-service FM stations, to provide the same interference remediation requirements to complaints of interference, without regard to whether such complaints of interference occur within or outside of the protected contour of such stations, under the same interference complaint and remediation procedures that FM translator stations and FM booster stations are required to provide to full-service stations as set forth in section 74.1203 of its rules (47 CFR 74.1203) as in effect on the date of enactment of this Act. Notwithstanding the provisions of section 74.1203, no interference that arises outside the relevant distance for the full-service station class specified in the first column titled `required' for `Co-channel minimum separation (km)' in the table listed in section 73.807(a)(1) of the Commission's rules (47 CFR 73.807(a)(1)) shall require remediation.

APPENDIX B

REC PROPOSED SECTION 73.810

§ 73.810 Third adjacent channel interference.

- (a) LPFM Stations Licensed at Locations That Do Not Satisfy Third-Adjacent Channel Minimum Distance Separations. An LPFM station licensed at a location that does not satisfy the third-adjacent channel minimum distance separations set forth in Section 73.807 is subject to the following provisions:
- (1) Such an LPFM station will not be permitted to continue to operate if it causes any actual third-adjacent channel interference to:
 - (a) The transmission of any authorized broadcast station; or
- (b) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or
- (c) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating LPFM stations, FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.
- (2) If third-adjacent channel interference cannot be properly eliminated by the application of suitable techniques, operation of the offending LPFM station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the licensee of the offending LPFM station to apply remedial techniques which demonstrably will eliminate the third-adjacent channel interference without impairment to the original reception, the licensee is absolved of further responsibility for that complaint.
- (3) Upon notice by the Commission to the licensee that such third-adjacent channel interference is being caused, the operation of the LPFM station shall be suspended within three minutes and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to spurious emissions by the LPFM station; *provided, however,* that short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(4) Periodic Announcements.

(a) For a period of one year from the date of licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807, such LPFM station shall broadcast periodic announcements. The announcements shall, at a minimum, alert listeners of the potentially affected third-adjacent channel station of the potential for interference, instruct listeners to contact the LPFM station to report any interference, and provide contact information for the LPFM station. The announcements shall be made in the primary language(s) of both the new LPFM station and the potentially affected third-adjacent channel station(s). Sample announcement language follows:

On (date of license grant), the Federal Communications Commission granted (LPFM station's call letters) a license to operate. (LPFM station's call letters) may cause interference to the operations of (third-adjacent channel station's call letters) and (other third-adjacent channel stations' call letters). If you are normally a listener of (third-adjacent channel station's call letters) or (other third-adjacent channel station's call letters) and are having difficulty receiving (third-adjacent channel station call letters) or (other third-adjacent channel station's call letters), please contact (LPFM station's call letters) by mail at (mailing address) or by telephone at (telephone number) to report this interference.

(b) During the first thirty days after licensing of a new LPFM station that is constructed on a third-adjacent channel and satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807, the LPFM station must broadcast the announcements specified in paragraph (b)(2)(a) at least twice daily. The first daily announcement must be made between the hours of 7 a.m. and 9 a.m., or 4 p.m. and 6 p.m. The LPFM station must vary the time slot in which it airs this announcement. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. The second daily announcement must be made outside of the 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. time slots. The LPFM station must vary the times of day in which it broadcasts this second daily announcement in order to ensure that the announcements air during all parts of its broadcast day. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day. For the remainder of the one year period, the LPFM station must broadcast the announcements at least twice per week. The announcements must be broadcast between the hours of 7 a.m. and midnight. For stations that do not operate at these times, the announcements shall be made during the first two hours of broadcast operations each day.

- (c) Any new LPFM station that is constructed on a third-adjacent channel and satisfies the minimum distance separations set forth in Section 73.807 must:
- (i) notify the Audio Division, Media Bureau, and all affected stations on third-adjacent channels of an interference complaint. The notification must be made electronically within 48 hours after the receipt of an interference complaint by the LPFM station; and
 - (ii) cooperate in addressing any third-adjacent channel interference.
- (b) LPFM Stations Licensed at Locations That Satisfy Third-Adjacent Channel Minimum Distance Separations. An LPFM station licensed at a location that satisfies the third-adjacent channel minimum distance separations set forth in Section 73.807 is subject to the following provisions:

Interference Complaints and Remediation.

- (1) Such an LPFM station is required to provide copies of all complaints alleging that its signal is causing third-adjacent channel interference to or impairing the reception of the signal of a full power FM, FM translator or FM booster station to such affected station and to the Commission.
- (2) A full power FM, FM translator or FM booster station shall review all complaints it receives, either directly or indirectly, from listeners regarding alleged third-adjacent channel interference caused by the operations of such an LPFM station. Such full power FM, FM translator or FM booster station shall also identify those that qualify as *bona fide* complaints under this section and promptly provide such LPFM station with copies of all *bona fide* complaints. A *bona fide* complaints:
 - (a) Must include current contact information for the complainant;
- (b) Must state the nature and location of the alleged third-adjacent channel interference and must specify the call signs of the LPFM station and affected full power FM, FM translator or FM booster station, and the type of receiver involved; and
- (c) Must be received by either the LPFM station or the affected full power FM, FM translator or FM booster station within one year of the date on which the LPFM station commenced broadcasts with its currently authorized facilities.
- (3) The Commission will accept *bona fide* complaints and will notify the licensee of the LPFM station allegedly causing third-adjacent channel interference to the signal of a full power FM, FM translator or FM booster station of the existence of the alleged interference within 7 calendar days of the Commission's receipt of such complaint.
- (4) Such an LPFM station will be given a reasonable opportunity to resolve all complaints of third-adjacent channel interference within the protected contour of the affected full

power FM, FM translator or FM booster station. A complaint will be considered resolved where the complainant does not reasonably cooperate with an LPFM station's remedial efforts. Such an LPFM station also is encouraged to address all other complaints of third-adjacent channel interference, including complaints based on interference to a full power FM, FM translator or FM booster station by the transmitter site of the LPFM station at any distance from the full power, FM translator or FM booster station.

- (5) In the event that the number of unresolved complaints of third-adjacent channel interference within the protected contour of the affected full power FM, FM translator or FM booster station plus the number of complaints for which the source of third-adjacent channel interference remains in dispute equals at least one percent of the households within one kilometer of the LPFM transmitter site or thirty households, whichever is less, the LPFM and affected stations must cooperate in an "on-off" test to determine whether the third-adjacent channel interference is traceable to the LPFM station.
- (6) If the number of unresolved and disputed complaints of third-adjacent channel interference within the protected contour of the affected full power, FM translator or FM booster station exceeds the numeric threshold specified in subsection (b)(4) following an "on-off" test, the affected station may request that the Commission initiate a proceeding to consider whether the LPFM station license should be modified or cancelled, which will be completed by the Commission within 90 days. Parties may seek extensions of the 90-day deadline consistent with Commission rules.
- (7) An LPFM station may stay any procedures initiated pursuant to paragraph (b)(5) of this section by voluntarily ceasing operations and filing an application for facility modification within twenty days of the commencement of such procedures.